(1) SBCivil Writ Petition No.2574/1996
(Pesticides India v. BOR & Ors.)

(2) SBCivil Writ Petition No.2575/1996
(Mogems India v. BOR & Ors.)

Date of Order :: 21st April, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sajjan Singh]
Mr. Durga Ram] for the petitioner.
Mr. B.L.Purohit, for the respondents.

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These two petitions for writ are founded on same facts and legal contentions, therefore, are decided by this common order.

A writ in the nature of certiorari is sought by the petitioner to quash the judgment dated 27.5.1996 (Anx.9) passed by Board of Revenue for Rajasthan, Ajmer affirming the judgment dated 31.1.1995 passed by Collector (Stamps), Udaipur Circle, Udaipur.

In brief, facts of the case are that the petitioner, a unit of Pesticides India Industries Ltd., Udaipur being desirous of setting up an industrial unit, applied for and was allotted land by Government of Rajasthan under the Rajasthan Land Revenue (Industrial Areas Allotment) Rules, 1959 (hereinafter referred to as “the Rules of 1959”) at village Badgaon, Tehsil Vallabhnagar, District Udaipur. A lease deed in this regard was executed

between the petitioner and the State of Rajasthan on 17.3.1989. The lease deed dated 17.3.1989 was duly registered and returned by Sub Registrar, Bhinder. The Sub Registrar, Bhinder by a notice dated NIL (Anx.2) called upon the petitioner to deposit the dues of less stamp duty and registration fee said to be paid while getting the lease deed dated 17.3.1989 registered. The notice aforesaid was said to be issued under the provisions of Section 47-C(3) of the Indian Stamp Act, 1899 (hereinafter referred to as "the Act of 1899"). It is pertinent to note that deficiency which was sought to be recovered from the petitioner was pointed out by the Accounts Examining Officer, Jaipur. The Sub Registrar in the notice Anx.2 made a specific stipulation in this regard.

A detailed reply was submitted on behalf of the petitioner on 15.9.1992 explaining therein that no deficient stamp duty was paid while getting the lease deed dated 17.3.1989 registered. On behalf of the petitioner it was also urged that after registering and returning the lease deed no reference under Section 47-C(3) of the Act of 1899 could have been made on basis of examination/inspection made by the Accounts Examining Officer. It was also pointed out that in fact the notice Anx.2 was not issued by application of mind by Sub Registrar or the Collector (Stamps) but was issued on inspection made by the Accounts Examining Officer, Jaipur.

The Collector (Stamps), Udaipur by order dated 31.1.1995 without dealing with objection raised by the petitioner with regard to maintainability of reference accepted the reference made to it and ordered for recovery of the sum of Rs.31,000/- from the petitioner against alleged deficient payment of stamp duty while getting the lease deed dated 17.3.1989 registered.

Being aggrieved by order dated 31.1.1995 the petitioner preferred revision petition before the Board of Revenue for Rajasthan, Ajmer which also came to be rejected by judgment dated 27.5.1996. In the revision petition also the petitioner contended that on basis of recommendation made by the Accounts Examining Officer no reference could have been made to the Collector (Stamps) by Sub Registrar. The Board of Revenue while rejecting the revision petition preferred by the petitioner did not choose to decide the objection aforesaid. Hence, these petitions for writ are preferred.

While giving challenge to the judgment impugned and the order passed by the Collector (Stamps) it is contended by counsel for the petitioner that notice issued by Sub Registrar in fact is not under Section 47-C(3) but is under Section 47-C(2A) of the Act of 1899 which was introduced in the said Act by Rajasthan Act No.17/89 w.e.f. 18.9.1989. The

provisions of Section 47-C(2A) of the Act of 1899 read as under:-

> "(2-A)Where it appears to a person having by law or consent of parties authority to receive evidence or a person in charge of a public office, during the course of inspection or otherwise, except an officer of a police, that a document or an instrument has not been correctly mentioned while registering it, such person shall forth with make a reference to the Collector to determine the correct nature thereof."

According to counsel for the petitioner the notice Anx.2 was issued by the Sub Registrar only on basis of inspection made by the Accounts Examining Officer, Jaipur, therefore, the powers were exercised under Section 47-C(2-A) and not under Section 47-C(3) of the Act of 1899. The Section 47-C(2-A) was added and came into force on 18.9.1989 i.e. after registration and return of lease deed concerned, therefore, no reference could have been made on that basis.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the Collector (Stamps) had right to examine and call for even the original instrument under Section 47-C(3) of the Act of 1899 and, therefore, it is wrong to say that the registering authority after registration of the document and after return of the document becomes

functus officio. The registering authority being a public officer is duty bound to impound the document and required to refer the matter to the Collector (Stamps).

Heard counsel for the parties and considered the rival contentions.

From perusal of notice Anx.2 it is apparent that the reference was made by Sub Registrar, Bhinder to Collector (Stamps), Udaipur totally on basis of inspection made by the Accounts Examining Officer, Jaipur. The Sub Registrar did not apply his mind while issuing the notice Anx.2. It is true that under Section 47-C(3) of the Act of 1899 the Collector is having power to call for and examine any document or instrument not referred to him under sub-sec.(1) which has been registered and returned to the executant or to any other person for the purpose of satisfying himself as to the correctness with regard to the nature of document or instrument. The Sub Registrar is also having powers to make reference while registering the document or instrument being having a reason to believe that nature of the document or instrument has not been correctly mentioned and the Collector after considering it by giving a reasonable opportunity of hearing to the party concerned may charge sufficient stamp duty and also impose penalty not exceeding ten times than deficiency determined. However, prior to

18.9.1989 there was no authority with the Sub Registrar or with the Collector to make reference of a document/instrument/deed registered and returned on basis of inspection made by the Accounts Examining Officer. The Collector also acquired to revise a document/deed/instrument already registered suo motu w.e.f. 18.9.1989.

In the present matters it is the position admitted that the reference was made with regard to a document registered prior to 18.9.1989 on basis of a inspection made by the Accounts Examining Officer, Jaipur. Such kind of reference could have been made only after 18.9.1989 with regard to documents registered after 18.9.1989 whereas in the present matters the lease deed was registered on 17.3.1989, therefore, no such reference could have been made by the Sub Registrar to the Collector (Stamps). The provisions of Section 47-C(2-A) of the Act of 1899 are not having any application for the documents/ instruments/deeds registered prior to 18.9.1989 being not having retrospective application. The Collector (Stamps), Udaipur as well as the Board of Revenue failed to examine this aspect of the matter and committed an error touching to their jurisdiction.

Accordingly, the judgment impugned dated 27.5.1996 passed by Board of Revenue for Rajasthan, Ajmer in Revision Petition No.65/95/Udaipur and

66/95/Udaipur and the order dated 31.1.1995 passed by the Collector (Stamps) Udaipur in reference 232-A/92 and 232/92 are bad in eye of law, therefore, are hereby quashed and the writ petitions are allowed with no order as to costs.

(GOVIND MATHUR),J.

kkm/ps.